

REMARKS

Applicant confirms the election (made without traverse) of the invention of Group I, claims 1-9, 26 and 27 for further prosecution in this patent application. Claims 10-25 are withdrawn from consideration as being directed to non-elected inventions. Claim 1 is currently amended. Claims 2-9, 26 and 27 are original. Applicant submits that no new matter has been introduced by way of these amendments.

Applicant notes further that, contrary to the suggestion of paragraph 8 of the Office Action of June 20, 2005, the application names only a sole inventor.

Applicant's invention of claim 1, the sole remaining independent claim, as now more clearly defined, is a composition consisting of at least a pH indicator and a delivery system comprising a pH-altering compound, the pH indicator and the pH-altering compound being selected, when combined in hand-washing action, to realize a color-change result in a pre-determined time after being combined.

Claims 1-7, 26 and 27 are rejected under 35 U.S.C. §102(e) as anticipated by, or, in the alternative, under 35 U.S.C. §103(a) as obvious over, Thurman et al. U.S. Patent Application Publication No. 2004-0121050. We respectfully traverse.

Applicant's specification describes, in part, a hand washing composition that changes color after a pre-determined period of time. In one implementation, the predetermined period of time is selected so that the color change coincides with a recommended minimum period of time of washing one's hands for effective cleansing. In contrast, Thurman et al. '050 neither teaches, nor suggests, selecting a pH indicator and a delivery system comprising a pH-altering compound that, when combined, realize a color-change in a pre-determined period after combining. Rather, Thurman et al. '050 describes color-changing beverage formed of a two component mixture, where the combined solution of the two mixtures is "detectably different from the color of the pH indicator in a solution of the first component mixture." Thurman et al. '050, para. 0007. Thurman et al. '050 simply teaches selecting the "amount of edible acid" to be sufficient to

generate a "detectably different" color in the mixed beverage. In fact, Thurman et al. '050 expresses no desire or intention for delay of the color-change results for a predetermined period of time after combining, "That is, the color of the first solution detectably changes upon combination of the first solution with the second mixture." Thurman et al. '050, para. 0020 and para. 0024.

Since Thurman et al. '050 does not teach, nor suggest, a composition in which the amount and type of acid and the delivery systems are chosen for achieving color-changing results in a pre-determined period of time after combining, e.g. in hand washing action, as described and now more clearly claimed by Applicant, Thurman et al. '050 fails to teach, or suggest, Applicant's invention.

Furthermore, with respect to claims 5 and 6, Applicant's delivery system is defined as comprising alginate in the form of beads having diameters selected relative to characteristics of the pH-altering compound, e.g. size and/or concentration, to cause release of the compound at a rate selected to realize color-changing results in a predetermined time period after combining, e.g. in hand washing action. This aspect of Applicant's disclosure is described at (page 4, line 26 to page 5, line 4:

Calcium alginate beads can be used as a delivery system that releases its contents in the amount of time that is the minimum recommended time for effective hand washing. For example, alginate beads can be used to release sodium bicarbonate approximately twenty seconds after the addition to the pH indicator. In a preferred embodiment, the beads are approximately 1mm to 3mm in size.

At least two factors are known to affect the rate of release of substances from alginate beads. One factor is size of the substance (i.e. the molecular structure) being released from the beads. Larger substances require more time to be released. A second factor is the concentration of the chemical in the solution mixed with the alginate solution. The higher the concentration, the more rapidly the substance is released. Mechanical forces, such a mixing and lathering, may also affect release time.

Thurman et al. '050 is not only silent with respect to the diameter of the sodium¹ alginate beads in the beverage composition (which the Examiner expressly admits), Thurman et al. '050

¹ In further contrast, Applicant describes use of calcium alginate beads.

provides entirely no teaching, nor suggestion, for use of alginate in bead form. As a result, Thurman et al. '050 entirely lacks teaching or suggestion for this element of Applicant's invention.

Applicant describes and claims a composition consisting of at least a pH indicator and a delivery system comprising a pH-altering compound, the pH indicator and the pH-altering compound being selected, when combined in hand-washing action, to realize a color-change result in a pre-determined time after being combined. The examiner cites Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342 (Fed. Cir. 1999) and In re Best, 562 F.2d 1252 (CCPA 1977), in support of arguments for anticipation, but these cases do not support rejection of Applicant's claims over the cited prior art. In particular, as noted above, the composition described and claimed by Application is substantially different from the composition described by Thurman et al. '050, and the new composition formulated by Applicant is not rendered unpatentable by the significantly different composition employed by Thurman et al. '050. To similar effect, Applicant's invention of a composition comprising a pH indicator and a pH-altering compound that are selected, when combined in hand-washing action, to realize a color-change result in a pre-determined time after being combined, does not represent a new use, new function or unknown property of the beverage composition taught by Thurman et al. '050.

Claims 1, 8, and 9 are rejected under 35 U.S.C. 103(a) as being obvious over Aleles et al. U.S. Patent 6,818,603. We respectfully traverse.

Applicant describes and claims a composition consisting of at least a pH indicator and a delivery system comprising a pH-altering compound, the pH indicator and the pH-altering compound being selected, when combined in hand-washing action, to realize a color-change result in a pre-determined time after being combined. In contrast, Aleles et al. '603 describes cleansing bars with discrete elements, including fibers, filaments, and particles, in order to achieve good grippability, exfoliating properties, and lathering effects, and there is no teaching or suggestion for color-changing compounds. Rather, Aleles et al. '603 selects the discrete elements solely for the physical, rather than chemical, properties, and Aleles et al. '603 entirely

fails to teach, or suggest, Applicant's invention of a pH indicator and a delivery system comprising a pH-altering compound, the indicator and compound being selected to realize a color-change result in a predetermined time after being combined.

Furthermore, contrary to the Examiner's assertions in paragraph 11 of the Office Action, one may not assume that "one of ordinary skill would have been motivated to combine the components to teach the claimed composition, absent a showing to the contrary." See, e.g., Akamai Technologies, Inc. v. Cable & Wireless Internet Services, Inc., 344 F.3d 1186 (Fed. Cir. 2003) ("When a rejection depends on a combination of prior art references, there must be some teaching, suggestion, or motivation to combine the references."); Teleflex, Inc. v. Ficosa North American Corp., 299 F.3d 1313 (Fed. Cir. 2002) ("The showing of a motivation to combine must be clear and particular, and it must be supported by actual evidence.") (citing In re Dembiczak, 175 F.3d 994, 999 (Fed. Cir. 1999)); Carella v. Starlight Archery, 804 F.2d 135 (Fed. Cir. 1986) ("Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination."); and In re Gordon, 733 F.2d 900 (Fed. Cir. 1984) ("The fact that a prior art device could be modified so as to produce the claimed device is not a basis for an obviousness rejection unless the prior art suggested the desirability of such a modification.").

As the Examiner admits, Aleles et al. '603 does not teach the claimed components and combination of Applicant's invention with sufficient specificity to exemplify the claimed composition. Since the claimed elements of Applicant's disclosure are not found in the cited prior art, and since there is no motivation found in Aleles et al. '603 for supplying the missing components, nor teaching or suggestion for combining those components in the manner described and claimed by Applicant, Aleles et al. '603 fails to render Applicant's claims obvious.

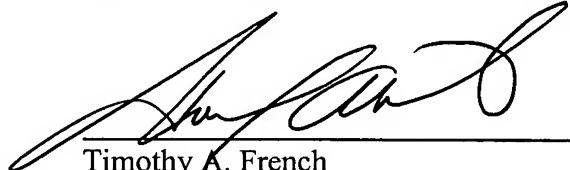
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On the basis of the arguments and distinctions set forth above, Applicant submits that this application is now in condition for allowance. Early favorable action is solicited. Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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